

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1593

Introduced by Assembly Member Coto

February 22, 2005

An act to add Section 123326 to the Health and Safety Code, relating to child nutrition.

LEGISLATIVE COUNSEL'S DIGEST

AB 1593, as amended, Coto. Child nutrition.

Existing law, the California Special Supplemental Food Program for Women, Infants, and Children (WIC), authorizes establishment of a statewide program, administered by the State Department of Health Services, for providing nutritional food supplements to low-income pregnant women, low-income postpartum and lactating women, and low-income infants and children under 5 years of age, who have been determined to be at nutritional risk. The program, which implements a program authorized under existing federal law, provides for the redemption of nutrition coupons by recipients at any authorized retail food vendor. *Existing federal and state regulations set forth the circumstances under which a WIC vendor is subject to a federally required sanction.*

~~This bill would declare the intent of the Legislature to enact legislation that would ensure that the disqualification of vendors under the state WIC program complies with~~ *prohibit a federally required 3-year disqualification from being imposed on a vendor in the WIC program based on violations found during a single monitoring visit, and would define when a pattern of violations exists, and would impose related notice requirements on the department. The bill would require the department to revise existing regulations relating to the*

definition of a pattern with respect to vendor violations, to conform to the bill and to the federal Child Nutrition and WIC Reauthorization Act of 2004, that would require proof of intent and a pattern of violation for vendor disqualification, and that would require that a WIC vendor be provided with adequate notice prior to disqualification. This bill would rescind a vendor disqualification based on an existing regulatory definition and would reinstate the disqualified vendor without requiring a reapplication to the department. The bill would provide that it would not subject the department to a claim or action for monetary damages arising from a vendor sanction based on existing regulatory law, imposed before January 1, 2006.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares as
- 2 follows:
- 3 (1) The California Supplemental Food Program for Women,
- 4 Infants, and Children (WIC) is a vital program for meeting the
- 5 health needs of pregnant, postpartum, and lactating women,
- 6 infants, and young children at nutritional risk.
- 7 (2) The federal government recently enacted the Child
- 8 Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265).
- 9 (3) The federal act requires the State Department of Health
- 10 Services to provide written notice to a vendor of an initial
- 11 violation when the department finds that the vendor has
- 12 committed a violation that requires a pattern of occurrences in
- 13 order to impose a penalty or sanction against the vendor.
- 14 (4) Section 246.12 of Title 7 of the Code of Federal
- 15 Regulations describes the vendor violations that require a state
- 16 agency to disqualify a vendor under the WIC program.
- 17 (5) Clause (i) of subparagraph (B) of paragraph (3) of
- 18 subdivision (e) of Section 40740 of Title 22 of the California
- 19 Code of Regulations defines a pattern of overcharges as
- 20 including overcharges that occur during a single monitoring
- 21 visit. Allowing a single event transaction to constitute a pattern
- 22 of overcharges is contrary both to the plain meaning of the word

1 “pattern,” as well as to the new notice requirements of the
2 Reauthorization Act of 2004.

3 (6) Honest and unintentional mistakes by vendors in the WIC
4 program should not be treated the same as intentional violations.
5 In addition, honest vendors should be provided the opportunity to
6 correct problems brought to their attention.

7 (b) It is the intent of the Legislature in enacting this act to
8 ensure that the disqualification of vendors under the WIC
9 program for a pattern of occurrences is consistent with the
10 federal Child Nutrition and WIC Reauthorization Act of 2004
11 (P.L. 108-265).

12 SEC. 2. Section 123326 is added to the Health and Safety
13 Code, to read:

14 123326. (a) Violations found during a single monitoring visit
15 unrelated to the sale of alcohol or tobacco shall not constitute a
16 pattern of occurrences for purposes of imposing a federally
17 required three-year disqualification against a food vendor.

18 (b) A pattern of occurrences exists when, based on the nature
19 and severity of the violations, the number of incidences of
20 violations from multiple monitoring visits demonstrates a pattern
21 of vendor fraud or abuse.

22 (c) If the department finds that a vendor has committed a
23 violation that requires a pattern of occurrences in order to
24 impose a penalty or sanction, the department shall notify the
25 vendor of the initial violation in writing prior to documentation
26 of another violation. This notice shall not be required where the
27 nature of the violation involves intent to defraud or overcharge
28 and the department makes the determination that notifying the
29 vendor would compromise an investigation.

30 (d) (1) The department shall revise the definition of “pattern”
31 contained in clause (i) of subparagraph (B) of paragraph (3) of
32 subdivision (e) of Section 40740 of Title 22 of the California
33 Code of Regulations to conform with this section and the federal
34 Child Nutrition and WIC Reauthorization Act of 2004 (P.L.
35 108-265).

36 (2) A vendor disqualification imposed prior to January 1,
37 2006, that is based on clause (i) of subparagraph (B) of
38 paragraph (3) of subdivision (e) of Section 40740 of Title 22 of
39 the California Code of Regulations is hereby rescinded. A vendor
40 disqualified pursuant to clause (i) of subparagraph (B) of

1 *paragraph (3) of subdivision (e) of Section 40740 of Title 22 of*
2 *the California Code of Regulations is hereby reinstated as an*
3 *approved vendor without the necessity of reapplication to the*
4 *department.*

5 *(e) Nothing in this section shall subject the department to a*
6 *claim or action for monetary damages arising from a vendor*
7 *sanction based on clause (i) of subparagraph (B) of paragraph*
8 *(3) of subdivision (e) of Section 40740 of Title 22 of the*
9 *California Code of Regulations imposed before January 1, 2006.*

10 ~~SECTION 1. It is the intent of the Legislature to enact~~
11 ~~legislation in subsequent amendments that would do all of the~~
12 ~~following:~~

13 ~~(a) Ensure that the disqualification of vendors under the~~
14 ~~California Special Supplemental Food Program for Women,~~
15 ~~Infants, and Children (Article 2 (commencing with Section~~
16 ~~123275) of Chapter 1 of Part 2 of Division 106; WIC) complies~~
17 ~~with the federal Child Nutrition and WIC Reauthorization Act of~~
18 ~~2004 (P.L.108-265).~~

19 ~~(b) Require proof of intent and a pattern of violation for~~
20 ~~vendor disqualification under the state WIC program.~~

21 ~~(c) Require that a vendor under the state WIC program be~~
22 ~~provided with adequate notice of an alleged violation of law prior~~
23 ~~to disqualification.~~